

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**EUGENE SCALIA,  
SECRETARY OF LABOR,  
UNITED STATES DEPARTMENT  
OF LABOR,**

*Plaintiff,*

v.

**VASQUEZ DRYWALL, LLC and  
MANUEL VASQUEZ, an individual,**

*Defendants.*

Case No. 4:19-cv-3104

**COMPLAINT**

**COMPLAINT**

Plaintiff, Eugene Scalia, Secretary of Labor of the United States Department of Labor, brings this action pursuant to Section 17 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. § 201, *et seq.*), (hereinafter, the “Act”), to enjoin Defendants from their continued violations of Sections 7, 11(c), 15(a)(2), and 15(a)(5) of the Act, including the imposition of a restraint on Defendants precluding the withholding of any payment of overtime compensation found by the Court to be due under the Act; and to recover unpaid overtime compensation owed by Defendants to their employees, together with an additional equal amount to be recovered as liquidated damages, pursuant to Section 16(c) of the Act.

**INTRODUCTION**

1. Throughout the statutory period, Defendants Vasquez Drywall, LLC (“Vasquez Drywall”) and Manuel Vasquez (“Vasquez”) (collectively “Defendants”) willfully failed to comply with the provisions of the Act by knowingly withholding hundreds of thousands of dollars in overtime compensation due to certain non-exempt employees and failing to make, keep, and preserve employee time records, which included overtime hours.

## **DEFENDANTS**

2. Defendant Vasquez Drywall is a limited liability company organized under the laws of the State of Nebraska, with its principal office and place of business at 12166 Magnum Circle, Suite 3, Lincoln, Nebraska. Defendant Vasquez Drywall is a construction company that specializes in commercial drywall.

3. At all times relevant herein, Defendant Vasquez Drywall has been an “employer” within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d).

4. Defendant Manuel Vasquez, an individual, is the owner and operator of Defendant Vasquez Drywall. At all times relevant herein, Vasquez has acted, directly or indirectly, in the interests of Defendant Vasquez Drywall with respect to its employees. Specifically, Vasquez has hired and/or fired employees of Defendant Vasquez Drywall, fixed employee wages, and signed employee paychecks. Accordingly, Vasquez is an “employer” within the meaning of Section 3(d) of the Act, 29 U.S.C. § 203(d).

## **JURISDICTION AND VENUE**

5. Jurisdiction of this action is conferred upon the Court by Sections 16(c) and 17 of the Act, 29 U.S.C. §§ 216(c), 217, as well as by 28 U.S.C. §§ 1331 and 1345.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to these claims occurred within this District.

## **COVERAGE**

7. The business activities of Defendants were and are related and performed through unified operation and common control for a common business purpose, and have, since December 2014, constituted an enterprise within the meaning of Section 3(r) of the Act, 29 U.S.C. § 203(r).

8. Since December 2014, said enterprise has had employees engaged in commerce or in the production of goods for commerce, including employees transporting, constructing, and otherwise working on materials that have been moved in or produced for commerce by any person; and annual gross volume of sales made or business done of not less than \$500,000; and, therefore, was and is an enterprise engaged in commerce within the meaning of Section 3(s)(1)(A) of the Act, 29 U.S.C. § 203(s)(1)(A).

#### **FACTUAL ALLEGATIONS**

9. The instant Wage and Hour Division investigation covered the period including July 2, 2015 through June 15, 2018.

10. Throughout the statutory period, Defendants knowingly failed to pay their non-exempt employees overtime wages at a rate of one-and-one-half times their respective straight rates of pay.

11. Instead, Defendants, in an attempt to mask their failure to pay appropriate overtime rates of pay, “third-ed” employee hours.

12. “Third-ing” occurs where an employer falsifies payroll records by reducing overall overtime hours worked by one-third to create the appearance of compliance with the overtime provisions of the Act.

13. Such actions constitute a continuation of actions discovered by the Wage and Hour Division during an earlier investigation of Defendants, which covered the period including December 4, 2014 through July 1, 2015.

14. Defendants also failed to make, keep, and preserve employee time records which included overtime hours.

### **VIOLATIONS OF THE ACT**

15. Defendants have willfully violated and continue to violate the provisions of Sections 7 and 15(a)(2), 29 U.S.C. §§ 207, 215(a)(2), of the Act by employing certain employees engaged in commerce, or in the handling of goods or materials that have been moved or produced for commerce, for workweeks in excess of forty (40) hours without compensating said employees at a rate not less than one-and-one-half times their respective straight time rates. Specifically, Defendants' overtime violations result from, but are not limited to, the following practices:

- a. Paying employees straight time rates for overtime hours worked in excess of forty (40) hours per week.

16. As "employers" subject to the provisions of the Act, Defendants have violated and continue to violate the provisions of Sections 11(c) and 15(a)(5) of the Act by failing to make, keep, and preserve adequate and accurate records of their employees' wages, hours, and other working conditions and practices of employment, as prescribed by the regulations (29 Code of Federal Regulations Part 516) promulgated pursuant to Section 11(c) of the Act.

17. Specifically, Defendants failed to, among other things, keep timesheets and/or maintain timesheets that included overtime hours worked in excess of forty (40) hours per week by certain non-exempt employees.

18. As a result of the violations of the Act alleged herein, amounts are owed for unpaid overtime compensation to certain employees specifically named in Appendix A (attached hereto) for the statutory time period.

**PRAYER FOR RELIEF**

WHEREFORE, cause having been shown, Plaintiff prays for judgment in favor of Plaintiff and against Defendants as follows:

- (a) An injunction, pursuant to Section 17 of the Act, 29 U.S.C. § 217, permanently enjoining Defendants, their officers, agents, servants, employees, successors, parties-in-interest, and those persons in active concert or participation with them who receive actual notice of any such judgment, from prospectively violating the overtime and recordkeeping provisions of the Act;
- (b) A judgment, pursuant to Section 16(c) of the Act, 29 U.S.C. § 216, against Defendants for overtime compensation that may be found by the Court to be due under the Act to certain current and former employees of Defendants named in Appendix A, together with an equal additional amount as liquidated damages; and
- (c) Such other and further relief as this Court deems just and appropriate.

**Dated: October 15, 2019**

**KATE O'SCANNLAIN**  
Solicitor of Labor

**CHRISTINE Z. HERI**  
Regional Solicitor

**EVERT H. VAN WIJK**  
Associate Regional Solicitor

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Department of Labor

## **APPENDIX A**

1. Acevedo, Adrian	23. Castellanos, David
2. Aguilera-Garcia, Jonathan F	24. Cebalos, William
3. Aguirre, Brandon Jefte	25. Cervantes, Julio Cesar
4. Alvada-Castillo, Marcos	26. Cervantes, Luis Enrique
5. Alvarado, Marcos	27. Chivalan-Tum, Pablo
6. Alvarado, Maria Magdalena	28. Cruz-Sanchez, Andres
7. Anguamede, Emilio	29. de Leon, Feliciano
8. Apodaca, Alfonso	30. de Leon, Juan
9. Apodaca, Saul	31. de Leon, Manuel
10. Aquino-Vides, Julio Cesar	32. de Leon-Imul, Juan Carlos
11. Arana, Margarito	33. del Val Juarez, Ambrocio
12. Arita, Oscar	34. Fernandez-Saucedo, Fermin
13. Arriaga, Salvado	35. Figueroa, Oscar
14. Arriza, Jose Luiz	36. Figueroa, Oscar Armando
15. Avitia, Pedro	37. Franco, Miguel
16. Ayala, Joel	38. Garcia, Pedro
17. Ayala, Raquel	39. Garcia-Solis, Braulio Waldemar
18. Batres-Pu, Juan Humberto	40. Gil, Alberto
19. Bernier-Caraballo, Ramon	41. Gonzalez, Alejandro
20. Carillo-Pu, Christian	42. Gonzalez, Carlos
21. Castaneda, Emanuel	43. Gonzalez-Hurutia, Yevere Jorge
22. Castaneda-Valerio, Edgar	44. Guzman-Perez, Jose Andres

45. Hernandez, Carlos A.	68. Najera, Juan
46. Hernandez, Genaro	69. Noriega, Rodolfo
47. Hernandez, Leonardo	70. Pedroza-Tenorio, Ivan
48. Hernandez-Rivas, Jose Israel	71. Perez, Donovan
49. Imul, Juan	72. Perez, Everaldo
50. Ixtacuy-Romero, Bernardino	73. Perez, Gamaliel
51. Lone-Dubon, Hector Salvador	74. Perez, Robeto
52. Lopez, Fernando	75. Perez-Guerra, Josue Edilberto
53. Lopez, Jose Antonio	76. Perez-Guerra, Selvin Donelci
54. Lopez de Leon, Luis Alberto	77. Perez-Lopez, Herald Gudiel
55. Lucas, Francisco-Pascual	78. Perez-Ramirez, Victor Manuel
56. Lucas, Juan Pascual	79. Pineda-Mireles, Carlos Cesar
57. Lugo, Daniel	80. Pineda-Mireles, Jose Osbaldo
58. Lugo, Hector	81. Pinto, Franklin
59. Maradiaga-Alvarez, Anibal	82. Pinto-Guillen, Julio Cesar
60. Martinez, Francisco	83. Quevedo, Carlos
61. Martinez, Jose A.	84. Quinonez, Victor Manuel
62. Martinez-Paramo, Rene	85. Ramirez, Juan Carlos
63. Medina-Alejandro, Tomas	86. Ramirez, Roberto
64. Morales, Ruben	87. Ramirez-Lemus, Nelson Francisco
65. Morales, William Eliceo	88. Ramirez-Vasquez, Alvaro
66. Munoz, Helmer Enrique	89. Reyes, Marcelino
67. Nagera-Figueroa, Abraham O.	90. Reyes-Carmona, Jorge

91. Reyez-Carmona	102. Sanchez-Sepulveda, Ernesto
92. Rios, Claudio	103. Sandoval, Roman
93. Rodriguez, Alexis	104. Saucedo-Gallegos, Jr., Juan
94. Rojas, Michael Lewis	105. Somastre-Trejo, Adaris
95. Romero-Barrios, Gregorio Heriberto	106. Soto, Ignacio
96. Salas, Alfonso	107. Valenciano, Jose Francisco
97. Salas-Ortiz, Juan Lorenzo	108. Vargas-Castillo, Cecilia
98. Salas-Ortiz, Miguel Angel	109. Viana-Osorio, Helder M.
99. Salgado-Quintana, Jose A	110. Vividor-Vasquez, Jonathan
100. Sanchez, Jose	111. Wong-Ramirez, Luis Guillermo
101. Sanchez-Maldonado, Omar J.	112. Yos, Gustavo